

1                                   **IN THE UNITED STATES DISTRICT COURT**  
2                                   **FOR THE DISTRICT OF PUERTO RICO**

3           Daniel Ayala Rodriguez, et al.,  
4           Plaintiffs,

5                                   v.

**Civil No. 02-2412 (GAG)**

6           Rullan, et al.,  
7           Defendants.

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9                                   **OPINION AND ORDER**

10           This matter is before the court on plaintiff's motion for reconsideration and to show cause  
11 as to why his due process claim should not be dismissed (Docket No. 86). After review of the record  
12 and pertinent law, the court **DENIES** plaintiff's motion for reconsideration on his political  
13 discrimination claims and **DISMISSES** his due process claim for failure to show cause.

14           **I. Political Discrimination Claims**

15           It is well-settled that when instituting a claim of political discrimination, the plaintiff bears  
16 the initial burden of producing sufficient evidence that his political affiliation was the substantial  
17 or motivating factor behind the challenged adverse employment action. See Mt. Healthy City Bd  
18 of Educ. v. Doyle, 429 U.S. 274, 287 (1977); Gonzalez de Blasini v. Family Department, 377 F.3d  
19 81, 85 (1st Cir. 2004). Plaintiffs must point to evidence on the record which could permit a rational  
20 fact-finder to conclude that their dismissals occurred and stemmed from politically based  
21 discriminatory animus. See Rivera Cotto v. Rivera, 38 F.3d 611, 614 (1st Cir. 1994). Proving that  
22 his political affiliation was a substantial or motivating factor in the adverse decision requires more  
23 than "[m]erely juxtaposing a protected characteristic-someone else's politics-with the fact that the  
24 plaintiff was treated unfairly." See Correa-Martinez v. Arrillaga-Beléndez, 903 F.2d 49, 58 (1st Cir.  
25 1990).

26           In the instant case, in support of his position, plaintiff points to the fact that his employers  
27 knew he was affiliated with the NPP party and had run on the NPP ticket for mayor of Canovanas,  
28 and that the ASEM administrators were PDP sympathizers. This is simply not enough to establish

Civil No. 02-2412 (GAG)

2

1 discriminatory animus. See Gonzalez-Pina v. Rodriguez, 407 F.3d 425, 432 (1st Cir. 2005) (holding  
2 that mayor's awareness of plaintiff's support for a rival mayoral candidate in the primary was, by  
3 itself, insufficient to establish political animus); Gonzalez De Blasini, 377 F.3d at 85-86 (affirming  
4 the dismissal of a complaint where plaintiff was a well-known supporter of the NPP, had held a  
5 trust/confidential/policymaking position under the previous NPP administration, and defendant  
6 employer had expressed interest in giving plaintiff's position to a PDP member); Cosme-Rosado v.  
7 Serrano-Rodriguez, 360 F.3d 42, 48 (1st Cir. 2004) (holding that statement of PDP mayor of intent  
8 to rid town of NPP activists was insufficient to generate genuine issues of material fact); and,  
9 Acevedo-Diaz v. Aponte, 1 F.3d 62, 69 (1st Cir. 1993) (holding that plaintiffs were not conspicuous  
10 targets for discriminatory employment action merely because they played prominent roles in publicly  
11 and vocally supporting a former mayor). Thus, summary judgment is warranted as a matter of law.

12 Furthermore, even assuming that plaintiffs assertions were enough, plaintiff still does not  
13 rebut defendants' reason for not renewing the contract. There is simply no support on the record to  
14 create a genuine factual and material issue for trial that he would not have been fired but for his  
15 political affiliation. The motion to reconsider the dismissal of the political discrimination claims  
16 is denied.

### 17 **III. Due Process Claim**

18 The Fourteenth Amendment guarantees public employees who have a property interest in  
19 continued employment the right to at least an informal hearing before they are discharged.  
20 Cleveland Board of Education v. Loudermill, 470 U.S. 532, 538 (1985). Whether a property interest  
21 exists depends upon whether it was objectively reasonable for the employee to believe, based upon  
22 his employment contract, that he could rely on continued employment. Bishop v. Wood, 426 U.S.  
23 341, 347-348 (1976).

24 In this case, the court ordered plaintiff to show cause as to why his due process claim should  
25 not be dismissed given that his contract with ASEM clearly contained a clause that reserved it the  
26 right to cancel the contract with thirty (30) days notice. See Docket No. 46, Exh. 8. Clause 23 of  
27 the contract clearly states: "[ASEM] reserves the right to cancel this contract at any time, with at  
28 least thirty (30) days advance notification..." Id. ASEM administrators met with Dr. Ayala on May

Civil No. 02-2412 (GAG)

3

22, 2006 to notify him that his contract would not be renewed. The contract expired on June 30, 2002 – thirty-eight (38) days after plaintiff was given notice. Without citing any authority, plaintiff only categorizes his performance according to past evaluations. This is not enough. Plaintiff has not proffered any facts that would, at a minimum, create an issue for trial that he had a property interest in his job or that he could rely on continued employment. As such, plaintiff has failed to show cause on his due process claim. The same is dismissed.

### III. Conclusion

Therefore, for the aforementioned reasons, the court **DENIES** the motion to reconsider (Docket No. 86), finds that no cause has been shown as to the due process claim, and **DISMISSES** the complaint in its entirety.

**SO ORDERED.**

In San Juan, Puerto Rico this 5th day of September 2006.

*/s/ Gustavo A. Gelpi*

GUSTAVO A. GELPI  
United States District Judge